

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 384 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

RAMANLAL MOTILAL SHAH & ANR

Appearance:

Shri K.P.Rawal, Additional Public Prosecutor, for the appellant - State.

Kum. Parul Patel, Advocate, for respondent No.1 - accused (Amicus Curiae)

Respondent No.2 - complainant served.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 16/12/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Khedbrahma on 20th May 1993 in Summary Case No.1319 of 1986 is under challenge in this appeal by leave of this court under Section 378 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Magistrate acquitted respondent No.1 - accused of the offence punishable under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. Respondent No.2 - complainant was working as a Food Inspector at the relevant time. According to him, he had been to village Parosada taluka Vijaynagar district Sabarkantha. He went to the shop of respondent No.1 - accused. He purchased a sample of groundnut oil to the tune of 400 gms. in presence of one panch witness. That sample was divided in three parts and each part was packed in a glass bottle and it was corked and sealed and it was pasted with a slip bearing his signature and that of the panch witness. Each bottle was placed in a packet and the packet was also sealed. One sealed packet was sent to the Public Analyst at Rajkot for his analysis and report and the other two packets were handed over to the local health authority at Himatnagar. On receipt of the report from the Public Analyst at Rajkot, the sample was found to be adulterated. Thereupon, sanction from the local health authority to prosecute respondent No.1 -accused was sought. On receipt of such sanction, a complaint was filed in the Court of the Judicial Magistrate (First Class) at Khedbrahma on 29th November 1986 charging respondent No.1 - accused of the offence punishable under Section 16 read with Section 7 of the Act. It came to be registered as Summary Case No.1319 of 1986. The required notice under the relevant provisions contained in Section 13 of the Act was served to respondent No.1 - accused. He made no attempt to get another sample examined by the Central Food Laboratory. The offence and other particulars were explained to respondent No.1 - accused on 27th July 1988 for the purpose of recording his plea. He did not plead guilty to the offence with which he was charged in the complaint. Thereupon, he was tried. After recording the prosecution evidence and after recording the further statement of respondent No.1 accused under Section 313 of the Code and after hearing arguments, by his judgment and order passed on 20th May 1993 in Summary Case No.1319 of 1986, the learned Judicial Magistrate (First Class) at Khedbrahma acquitted

respondent No.1 - accused. That aggrieved the State Government. It has therefore invoked the appellate jurisdiction of this court by means of this appeal after obtaining its leave under Section 378 of the Code.

3. Since respondent No.1 - accused appeared neither in person nor through any advocate despite service of the notice of this appeal, this court thought it fit to avail of services of one advocate, named, Kum. Parul Patel, as amicus curiae for representing respondent No.1 - accused.

4. Learned Additional Public Prosecutor Shri Rawal for the appellant - State has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate was not justified in coming to the conclusion that the sample was not collected by the Food Inspector according to law. It has been urged by learned Additional Public Prosecutor Shri Rawal for the appellant - State that the evidence of the Food Inspector was unimpeachable and that by itself was sufficient to fasten the criminal liability to respondent No.1 - accused. As against this, learned Advocate Kum. Patel for respondent No.1 - accused has submitted that the learned trial Magistrate has carefully examined and appreciated the evidence on record and has come to the conclusion that the guilt could not be brought home to respondent No.1 - accused beyond any reasonable doubt. It has further been urged by learned Advocate Kum. Patel for respondent No.1 - accused that the learned trial Magistrate was fully justified in accepting the defence version that he was not dealing in any kind of edible oil much less in groundnut oil and the sample of oil collected from him was from the tin meant for his household use. Learned Advocate Kum. Patel for respondent No.1 - accused has further submitted that the view taken by the learned trial Magistrate is a possible view and, according to well-settled principles of law governing acquittal appeals, this court need not interfere with the impugned judgment and order of acquittal passed by the learned trial Magistrate on that account.

5. It may be noted that the learned trial Magistrate has found certain material contradictions between the oral testimonies of the complainant - Food Inspector at Exh.19 and the panch witness at Exh.44. It was the case of the Food Inspector at Exh.19 that he had carried with him the vessel for collecting the sample of groundnut oil. According to the Food Inspector at Exh.19, it was a stainless steel vessel. The panch witness at Exh.44 has deposed that the vessel was of aluminium and the Food

Inspector had collected the aluminium vessel for collecting the sample from respondent No.1 - accused himself. A doubt would therefore arise whether or not the vessel for collecting the sample was quite neat and clean for the purpose of retaining fitness of the sample for analysis. It cannot be gainsaid that the vessel for collecting the sample of groundnut oil should be neat and clean. If it was a stainless steel vessel and if it was properly cleaned, its cleanliness could not have been questioned. If it was collected from respondent No.1 - accused and that too if it was an aluminium vessel, in absence of any cogent and convincing evidence, it could not be accepted as a clean vessel for the purpose of collecting the sample.

6. It may be noted at this stage that the panch witness was not declared hostile at any stage of his oral testimony. In that view of the matter, the learned trial Magistrate rightly found the contradiction to be material and capable of raising a doubt whether or not a clean vessel was used for collecting the sample of groundnut oil.

7. The oral testimony of the Food Inspector at Exh.19 with respect to the use of corks for fastening the sample bottles is at variance with the oral testimony of the panch witness at Exh.44 on the point. The latter has clearly stated in his oral testimony that corks were not used for fastening the sample bottles. Instead, according to the panch witness at Exh.44, metal lids were used for fastening the sample bottles. The learned trial Magistrate has rightly found this contradiction also to be material. Such contradiction would doubt the veracity of the Food Inspector's version, more particularly when the panch witness has not been declared hostile to the prosecution.

8. Learned Additional Public Prosecutor Shri Rawal for the appellant - State has taken pains in submitting that such contradictions by themselves would not doubt the veracity of the prosecution version. Ordinarily, that might have been so. However, one fact deserves to be noted and, in the light of that factual position, the aforesaid contradictions assume importance.

9. The Food Inspector at Exh.19 has admitted that the shop and the residence of respondent No.1- accused was in the same premises. In the front portion was the shop of about 10 ft. x 12 ft. and on the rear portion was his residence. The panch witness at Exh.44 has also clearly stated that the shop and the residence of

respondent No.1 - accused was in the same premises. The panch witness at Exh.44 has however categorically stated that respondent No.1 - accused did not deal in any kind of edible oil much less in groundnut oil. The panch witness at Exh.44 has further stated that he did not find any oil tin in the shop of respondent No.1 - accused. In that view of the matter, the learned trial Magistrate has rightly accepted the defence version to the effect that the sample of groundnut oil was collected from the oil tin meant for household use. In that context, the aforesaid contradictions in the oral testimony of the Food Inspector at Exh.19 and of the panch witness at Exh.44 would be material and would assume importance.

10. I think the learned trial Magistrate was justified in accepting the defence version to the effect that respondent No.1 - accused was not dealing in edible oil much less groundnut oil and that the sample of groundnut oil was collected from the oil tin meant for his household use. The Food Inspector at Exh.19 has clearly admitted that he made no inquiries whether or not respondent No.1 - accused had any licence for dealing in groundnut oil. No printed invoice for the purchase of the sample groundnut oil was obtained. That would justify the learned trial Magistrate's view that respondent No.1 - accused was not dealing in any edible oil much less groundnut oil. The view taken by the learned trial Magistrate is a possible view. This court cannot and need not interfere with the impugned judgment and order of acquittal according to the well-settled principles of law governing acquittal appeals as the view taken by the learned trial Magistrate appears to be a possible view.

11. In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of acquittal calls for no interference by this court in this appeal.

12. Before parting with this judgment, I shall fail in my duty if I do not make a note of appreciation for the valuable assistance rendered by Kum. Patel for respondent No.1 - accused. She has taken pains in bringing to the notice of this court salient features of the defence version.

13. In the result, this appeal fails. It is hereby dismissed.

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